



Paper No. 20

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OFFICE OF PETITIONS

In re Application of
Auger
Application No. 09/932,976
Filed: August 21, 2001
Attorney Docket No. 67233-011

ON PETITION

This decision concerns the October 24, 2003 petition under 37 CFR 1.137(b).

The petition is **GRANTED**.

On August 8, 2002, a final Office action was mailed, setting forth a 3-month shortened statutory reply period.

A proposed amendment (Amendment B) filed on November 8, 2002, as indicated in the November 20, 2002 Advisory Action, did not place the application in condition for allowance and was not entered by the Examiner. The Advisory Action pointed out that the period for responding to the August 8, 2002 final Office Action remained that set forth in that Office action.

However, a Notice of Appeal was filed concurrently with the November 8, 2002 proposed amendment. Accordingly, Applicant was permitted to file an appeal brief within 2 months of the November 8, 2002 filing date of the Notice of Appeal, i.e., on or before January 8, 2003. This 2-month period was extendable under 37 CFR 1.136(a), by up to 5 more months, through June 8, 2003.

No appeal brief was filed on or before June 9, 2003 (Monday), and no extension of time was obtained. The application became abandoned on January 9, 2003.

The instant petition encloses a Request for Continued Examination (RCE) as reply to the August 8, 2002 final Office Action; the \$385 RCE filing fee (small entity); an amendment as the RCE "submission" required by 37 CFR 1.114; and the \$665 petition fee (small entity). The petition also states that the entire delay in filing a proper reply to the August 8, 2002 final Office Action from the due date until the filing of a grantable §1.137(b) petition was unintentional. The petition is thus granted.

The application is hereby revived for establishing continuity with the RCE.

As requested, the new power of attorney and the new correspondence address have been entered and made of record.

Finally, the Office notes that the sole inventor named in the application, Stephen B. Auger, assigned his interest in the claimed invention to Wood Infusions, Inc. on August 9, 2001.¹ Another document, signed by Stephen B. Auger on May 17, 2003, is recorded in the USPTO as an "assignment" from Stephen B. Auger of his entire rights in this claimed invention to Stain, Inc.² The §3.73(b) statement in the file shows Stephen B. Auger as president of Wood Infusions, LLC. While it is conceivable that Stephen B. Auger signed the May 17, 2003 document on behalf of Wood Infusions, Inc., proper corrections in the assignment papers including the recordation cover sheet should be submitted directly to the USPTO Assignment Branch.

The application file is being returned to Technology Center 1700 for continued examination.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang
Petitions Attorney
Office of Petitions

Attachments: Notice Regarding Change of Power of Attorney (revoking prior powers of attorney)
Notice of Acceptance of Power of Attorney (accepting 10/24/03 Power of Attorney)

¹ Recorded in the USPTO, Assignment Branch, at Reel/Frame 012121/0696 on 8/21/01.

² Reel/Frame 013811/0445.